IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 25TH MAY 2007 / 4TH JYAISHTA 1929

WP(C).No. 36842 of 2004(J)

AGAINST THE ORDER DATED 1-7-2004 IN EP.NO. 78 /2001 IN LAR.1/1991 of PRINCIPAL SUB COURT,KOCHI

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PETITIONER:

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1. V.A.JACOB, AGED 88 YEARS, S/O.ANTONY,
MUNDAMVELI, KOCHI 5.

*2. THAMPI JACOB S/O LATE.V.A.JACOB AGED 55 YEARS
VATTATHRA HOUSE , MUNDAMVELI P.O, KOCHI-682 507

*3. LESLIE JACOB, S/O LATE V.A.JACOB AGED 63 YEARS
-DO-

(* PETITIONERS 2 AND 3 ARE IMPLEADED AS SUPPLEMENTAL PETITIONERS AS PER ORDERIN I.A NO. . 7905 OF 2006 DATED 25-05-2007)

BY ADV. SRI.K.V.SOHAN
SRI.THAMBI JACOB
SRI.TONY PETTAH

RESPONDENTS:

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1. STATE OF KERALA, REP. BY SPECIAL
TAHSILDAR, GREATER COCHIN DEVELOPMENT AUTHORITY,
KADAVANTHARA, ERNAKULAM.

2. THE SECRETARY, GREATER COCHIN
DEVELOPMENT AUTHORITY, ERNAKAULAM,
KOCHI 682 020.

BY ADV. SRI.P.R.RAMACHANDRA MENON, SC,GCDA
GOVERNMENT PLEADER SRI.SHYSON P. MANGUZHA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 25/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PETITIONER'S EXHIBITS

Ext.P1: True copy of the judgment dated 21-7-1994 passed by the Principal Sub-judge, Kochi in L.A.R. No.1 of 1991

Ext.P2: True copy of the decree dated 21-7-1994 passed by the Principal Sub-Judge Kochi in L.A.R No.1 of 1991

Ext. P3: True copy of the Balance Statement dated 28-10-2003 filed by the petitioner before the Sub-Court, Kochi

Ext.P4: True copy of the Balance Statement dated 10-2-2004 filed by the 1st respondent before the Learned Sub Judge , Kochi

Ext.P5: True copy of order passed by the Principal Sub Judge , Kochi-5 dated 1-7-2004 in E.P No. 78 of 2001 in L.A.R. No. 1 of 2001

Ext.P6: True copy of the registered will executed by late. V.A. Jacob dated 20-9-2000.

RESPONDENT'S EXHIBITS

Ext.R2(a) : True copy of the revised calculation statement showing the excess payment.

//True copy//

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PIUS.C.KURIAKOSE. J.

W.P.(C) No. 36842 of 2004

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I.A. No.7905 of 2006

Dated this the 25th day of May 2007

JUDGMENT

I.A. No. 7905 of 2006 will stand allowed. It is recorded that the petitioner is no more and the petitioners in the I.A are impleaded as supplemental petitioners in the writ petition and all other pending proceedings The registry will carry out the corrections in the cause title.

2. Ext.P5 order passed by the execution court in a proceeding initiated by the Original writ petitioner for execution of a decree which he had obtained in a land acquisition reference case is under challenge. The learned Sub judge overruled the contentions of the decree holder and court has found that the balance amount due under the decree was only Rs. 27,574/-. The requisitioning authority G.C.D.A has filed a detailed counter- affidavit justifying the order R2(a), calculation statement is also filed along with the counter- affidavit.

3. Heard Sri.K.V.Sohan counsel for the petitioner and Sri.P.R.Ramachandra menon standing counsel for the G.C.D.A and also Sri.Shyson P.Manguzha, Government Pleader. My attention was drawn by Mr. Sohan to the latest pronouncement of the Supreme Court in **Gurpreet Singh Vs. Union of India (2006 (8) SCC 457)** wherein the

Supreme Court has explained and laid down the principles to be followed while appropriating the part payments made towards the decree debt in land acquisition cases. Necessarily the order Ext.P5 has to be reconsidered by the learned Sub judge in the light of the latest Supreme Court decisions. Ext.P5 is accordingly set aside. The learned Sub judge will pass fresh orders and determine the correct balance due to the supplemental petitioners under the decree in L.A.R. 1/1987. This is to be done after hearing the petitioners and the requisitioning authority and also the Govt. pleader. Orders as directed above will be passed at the earliest as any rate within two months of receiving a copy of this judgment.

PIUS.C.KURIAKOSE,JUDGE

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